

FEDERAL RESERVE SYSTEM

The Toronto-Dominion Bank
Toronto, Canada

TD Banknorth Inc.
Portland, Maine

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank (“TD”) and its subsidiary, TD Banknorth Inc. (“TD Banknorth”) (collectively “Applicants”), both financial holding companies within the meaning of the Bank Holding Company Act (“BHC Act”), have requested the Board’s approval under section 3 of the BHC Act¹ to acquire Hudson United Bancorp and its wholly owned subsidiary, Hudson United Bank, both of Mahwah, New Jersey.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 Federal Register 56,166 and 57,876 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

TD, with total consolidated assets of approximately \$310 billion, is the second largest banking organization in Canada.³ TD is the 39th largest depository organization in the United States, controlling \$29.2 billion in deposits through its

¹ 12 U.S.C. section 1842.

² Applicants propose to acquire the nonbanking subsidiaries of Hudson United Bank in accordance with section 4(k) of the BHC Act and the post-transaction notice procedures in section 225.87 of Regulation Y. 12 U.S.C. section 1843(k); 12 CFR 225.87.

³ Canadian asset data are as of October 31, 2005, and rankings are as of July 31, 2005. Both are based on the exchange rate then in effect. Domestic assets are as of September 30, 2005, and deposit data and rankings are as of June 30, 2005.

U.S. subsidiary insured depository institutions, TD Waterhouse Bank, National Association (“TDW Bank”), Jersey City, New Jersey, and TD Banknorth, National Association (“TDB Bank”), Portland, Maine. TD also operates a branch in New York City and an agency in Houston.

Hudson United Bancorp, with total consolidated assets of approximately \$9.1 billion, is the 74th largest depository organization in the United States, controlling deposits of \$6.6 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States. On consummation of this proposal, TD would become the 34th largest depository organization in the United States, controlling deposits of approximately \$35.8 billion, which represent less than 1 percent of total deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met.⁴ For purposes of the BHC Act, the home state of TD is New York, and Hudson United Bank is located in Connecticut, Pennsylvania, New Jersey, and New York.⁵

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition

⁴ Under section 3(d), a bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. section 1841(o)(4)(C). New York is the home state of TD for purposes of the International Banking Act and Regulation K. 12 U.S.C. section 3103; 12 CFR 211.22.

⁵ For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. sections 1841(o)(4)-(7) and 1842(d)(1)(A) and (d)(2)(B).

enumerated in section 3(d) of the BHC Act are met in this case.⁶ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁷

TD and Hudson United Bancorp compete directly in the Metro New York and the Hartford and New Haven, Connecticut banking markets.⁸ The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of

⁶ 12 U.S.C. sections 1842(d)(1)(A)-(B), 1842(d)(2)(A)-(B). TD is adequately capitalized and adequately managed, as defined by applicable law. Hudson United Bank has been in existence and operated for the minimum period of time required by applicable state law. See Conn. Gen. Stats. Ann. Ch. 666 section 36a-411 (five years). Pennsylvania and New Jersey do not have minimum age requirements applicable to the proposal. On consummation of the proposal, TD would control less than 10 percent of the total amount of deposits of insured depository institutions (“total deposits”) in the United States. TD would also control less than 30 percent of total deposits in Connecticut and New Jersey, consistent with state law. See Conn. Gen. Stats. Ann. Ch. 666 section 36a-411 and N.J. Stat. Ann. 17.9A-413(2003). All other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

⁷ 12 U.S.C. section 1842(c)(1).

⁸ These banking markets are described in Appendix A.

competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets (“market deposits”) controlled by TD and Hudson United Bancorp,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in these banking markets.¹¹ After consummation, the Metro New York and New Haven banking markets would remain moderately concentrated, and the Hartford banking market would remain highly concentrated, as measured by the HHI. In each market, the increase in concentration would be small and numerous competitors would remain.

⁹ Deposit and market share data are based on Summary of Deposits reports filed as of June 30, 2005, and on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹⁰ Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹¹ Market data for these banking markets are provided in Appendix B.

The Department of Justice has reviewed the anticipated competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in any of these markets or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by the Applicants, and public comment on the proposal.¹² The Board also has consulted with the Office of the Superintendent of Financial Institutions (“OSFI”), which is responsible for the supervision and regulation of Canadian banks.

¹² A commenter expressed concerns about press reports of a lawsuit recently filed against TD by options traders at the Chicago Board of Options Exchange. The lawsuit involves allegations about the price paid by TD in its earlier acquisition of the traders’ limited liability company. This matter is not within the Board’s jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See, e.g., Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The capital levels of TD would continue to exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. In addition, the U.S. subsidiary depository institutions of Applicants and Hudson United Bancorp are well capitalized and would remain so on consummation of the proposal. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal. The proposed transaction is structured as a combination share exchange and cash purchase. TD will use existing resources to enable TD Banknorth to fund the cash portion of the consideration to be received by Hudson United Bancorp shareholders.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of TD's U.S. operations, Hudson United Bancorp, and Hudson United Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking

supervisory agencies with the organizations and their records of compliance with applicable banking laws.¹³ TD, Hudson United Bancorp, and their U.S. subsidiary banks are considered well managed. The Board has also considered Applicants' plans for implementing the proposal, including the proposed management after consummation.

Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.¹⁴

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive

¹³ A commenter also expressed concern about TDB Bank's relationships with unaffiliated retail check cashers, pawn shops, and other nontraditional providers of financial services. As a general matter, the activities of the consumer finance businesses identified by the commenter are permissible, and the businesses are licensed by the states where they operate. Applicants have indicated that they regularly review TDB Bank's relationships with these types of businesses and have opted to continue relationships with those firms willing to meet certain conditions. These conditions include providing representations and warranties in each loan agreement with TDB Bank that the firm will comply with all applicable laws, including all applicable fair lending and consumer protections laws, and will follow the bank's requirements to ensure compliance with anti-money-laundering laws and regulations. Applicants have represented that neither TDB Bank nor any of its affiliates play any role in the lending practices, credit review, or other business practices of these firms, nor does the bank or any of its affiliates purchase any loans originated by these firms.

¹⁴ A commenter reiterated its concerns about allegations in press reports that TD assisted Enron in preparing false financial statements. The commenter had submitted substantially similar comments in connection with TD's proposal to acquire Banknorth Group, Inc., Portland, Maine. As noted in the Board's order approving that proposal, the Securities and Exchange Commission ("SEC") has the authority to investigate and adjudicate whether any violations of federal securities laws have occurred. The Toronto-Dominion Bank, 91 Federal Reserve Bulletin 277, fn. 15, (2005) ("TD Banknorth Order"). The Board has consulted with the SEC about this matter.

supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.¹⁵ As noted, the home country supervisor of TD is the OSFI.

In approving applications under the BHC Act and the International Banking Act (“IBA”),¹⁶ the Board previously has determined that TD was subject to home country supervision on a consolidated basis by the OSFI.¹⁷ Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁸ The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed to make available to the Board such information on the operations of it and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the

¹⁵ 12 U.S.C. section 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the bank, including its relationship to any affiliates, to assess the bank’s overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

¹⁶ 12 U.S.C. section 3101 et seq.

¹⁷ TD Banknorth Order.

¹⁸ See 12 U.S.C. section 1842(c)(3)(A).

IBA, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable TD and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that TD has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on this proposal, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁹ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁰

The Board has considered carefully all the facts of record, including reports of examination on the CRA performance records of TD’s subsidiary insured depository institutions and Hudson United Bank, data reported by Applicants under the Home Mortgage Disclosure Act (“HMDA”),²¹ other information provided by Applicants, and public comments on the proposal. Two commenters opposed the

¹⁹ 12 U.S.C. section 1842(c)(2); 12 U.S.C. section 2901 et seq.

²⁰ 12 U.S.C. section 2903.

²¹ 12 U.S.C. section 2801 et seq.

proposal and expressed concern about the community reinvestment or home mortgage lending records of TDB Bank and Hudson United Bank. One commenter expressed concern about possible branch closures after consummation of the proposal. Commenters also alleged, based on 2004 HMDA data, that TDB Bank and Hudson United Bank provided a low level of home mortgage lending to LMI borrowers or in LMI communities and that Applicants engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²²

TDW Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 10, 2003.²³ The OCC has not yet evaluated TDB Bank's CRA performance. After acquiring Banknorth Group, Inc. in 2005, TD formed TDB Bank by renaming Banknorth, National Association ("Banknorth Bank"), Portland, Maine. Banknorth Bank was formed in 2002 by the consolidation of seven subsidiary banks

²² See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

²³ TD dissolved its other U.S. subsidiary insured depository institution, TD Bank USA, FSB, Jersey City, New Jersey, as of December 31, 2004.

of Banknorth Group, Inc.²⁴ All those subsidiary banks had “satisfactory” or “outstanding” CRA performance ratings when they were consolidated.²⁵

Hudson United Bank received an overall rating of “satisfactory” at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of February 10, 2005.²⁶

On consummation of the proposal, Applicants propose to merge Hudson United Bank into TDB Bank.²⁷ Applicants stated that TDB Bank will implement its CRA organization and programs in Hudson United Bank’s markets immediately after consummation of the acquisition.²⁸ In addition, Applicants represented that TDB Bank will hire a Community Development Manager, who will be responsible for coordinating the CRA plan in Hudson United Bank’s markets, and will appoint a CRA committee composed of senior managers from both banks to oversee the development and implementation of this plan.

²⁴ Peoples Heritage Bank, N.A. (“Peoples Heritage”), also of Portland, was the surviving institution of that consolidation and was renamed Banknorth Bank.

²⁵ Peoples Heritage received an “outstanding” CRA performance rating by the OCC as of July 2001. First Massachusetts Bank, N.A. (“First Massachusetts”), Worcester, Massachusetts, Banknorth Group, Inc.’s largest subsidiary bank before consolidation, received a “satisfactory” CRA performance rating by the OCC as of April 2001. The CRA performance ratings of the remaining consolidated subsidiary banks are listed in Appendix A of the TD Banknorth Order.

²⁶ The evaluation period for the lending test was January 1, 2002, through December 31, 2004. The evaluation period for the investment and service tests was April 25, 2002, through February 25, 2005.

²⁷ Applicants have filed an application under the Bank Merger Act (12 U.S.C. section 1828(c)) with the OCC to merge Hudson United Bank into TDB Bank, with TDB Bank as the surviving entity.

²⁸ One commenter expressed concern that TDB Bank had not provided a detailed plan for how it will meet the needs of the communities served by Hudson United Bank after consummation of the proposal. The OCC will evaluate TDB Bank’s CRA performance after consummation in future CRA evaluations of the bank.

B. CRA Performance of TDW Bank and TDB Bank

The Board considered the March 2003 CRA evaluation of TDW Bank and the July 2001 evaluation of TDB Bank in the TD Banknorth Order. Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the TD Banknorth Order concerning TDW Bank's and TDB Bank's CRA performance records. Applicants provided the Board additional information about both banks' CRA performance since the latest evaluations. The Board also consulted with the OCC about the CRA performance of TDW Bank and TDB Bank and with the FDIC about the CRA performance of Hudson United Bank since the banks' most recent CRA evaluations.

1. CRA Performance of TDW Bank

As noted, TDW Bank received a "satisfactory" CRA performance rating in its March 2003 evaluation.²⁹ Examiners reported that the bank originated or purchased almost \$16.8 million in community development loans during the evaluation period and had met its annual goals for community development lending each year. These loans funded affordable housing for LMI individuals in the bank's assessment areas in New Jersey and New York.

The bank's community development investments totaled almost \$77 million at the end of the evaluation period and included investments in community development financial institutions, low-income housing tax credit projects, and

²⁹ TDW Bank has elected to be evaluated for CRA performance under a strategic plan. Under this alternative, a bank submits a plan, subject to the OCC's approval, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment area, and the OCC evaluates the bank on its success in achieving the goals in the approved plan. See 12 CFR 25.27. The evaluation period for the March 2003 evaluation was January 1, 2000, through December 31, 2002, and reviewed the bank's CRA performance under strategic plans approved by the OCC in March 1998 (for 2000) and November 2000 (for 2001 and 2002). In February 2004, the OCC approved the bank's strategic plan for 2004 through 2006.

affordable housing bonds issued by the New Jersey and New York housing authorities. Examiners reported that the bank met its goals for community development investments in 2000 and 2002 and substantially met its goal in 2001. Examiners also reported that TDW Bank made \$1.04 million in qualified community development grants during the evaluation period and met its annual goals for grants in all three years. In addition, the bank met its annual goals for membership in community development organizations, including organizations involved in providing affordable LMI housing and supporting community development corporations.

2. CRA Performance of TDB Bank

As noted, TDB Bank is the successor to Banknorth Bank, which was formed in 2002 through the consolidation of the subsidiary banks of Banknorth Group, Inc. The OCC began a CRA evaluation of TDB Bank during the fourth quarter of 2004, but the results are not yet available. The Board has consulted with the OCC, however, about the preliminary results of this exam. The OCC also has not evaluated TDB Bank's predecessor, Banknorth Bank. Banknorth Bank's principal predecessor banks included Peoples Heritage and First Massachusetts, which, as noted, received "outstanding" and "satisfactory" ratings, respectively, at their most recent CRA evaluations by the OCC in 2001.

Peoples Heritage. Peoples Heritage received a rating of "outstanding" under the lending test in its July 2001 CRA performance evaluation.³⁰ Examiners stated that the bank's overall distribution of home mortgage loans to LMI geographies and borrowers was good during the evaluation period. They also noted that Peoples Heritage participated in mortgage programs sponsored by the State of Maine that

³⁰ The evaluation period for the lending test was July 1, 1998, through December 31, 2000. The evaluation period for the service and investment tests was September 1, 1998, through July 9, 2001.

offered flexible underwriting and documentation standards, below-market interest rates, and low down payment requirements.

Examiners reported that Peoples Heritage's record of making small loans to businesses in LMI census tracts was excellent.³¹ The bank also made more than \$16 million in community development loans during the evaluation period, including \$11 million in loans to help create more than 160 units of housing for LMI individuals and families.

Peoples Heritage received ratings of "high satisfactory" and "outstanding" on the investment and service tests, respectively, in the July 2001 evaluation. During the evaluation period, Peoples Heritage made 80 qualified investments totaling \$3.6 million, a level that examiners described as good. Examiners noted that the percentage of the bank's branches in LMI census tracts generally equaled or exceeded the percentage of the population living in LMI census tracts in the bank's assessment areas. They also reported that Peoples Heritage provided an excellent level of community development services.

First Massachusetts. First Massachusetts received a rating of "high satisfactory" under the lending test in its April 2001 CRA performance evaluation.³² Examiners stated that the bank's distribution of home mortgage loans to LMI geographies and borrowers was adequate or better in each of the bank's assessment areas. They also noted that the bank participated in a number of state and federal affordable housing programs with flexible underwriting criteria and other features designed to promote homeownership among LMI individuals.

³¹ In this context, "small loans to businesses" refers to loans with original amounts of \$1 million or less that are either secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

³² The evaluation period was July 1, 1997, through December 31, 2000, except for community development lending, investments, and services, which were evaluated from August 1, 1997, through April 20, 2001.

Examiners reported that First Massachusetts's record of making small loans to businesses in LMI census tracts was adequate or better in each of the bank's assessment areas. The bank also made more than \$23 million in community development loans during the evaluation period, including loans to the Massachusetts Housing Partnership Fund, which promotes affordable housing and neighborhood development throughout the state.

First Massachusetts received ratings of "low satisfactory" and "high satisfactory" on the investment and service tests, respectively, in the April 2001 evaluation. During the evaluation period, the bank made approximately \$11.3 million in qualified investments, a level that examiners described as adequate. Examiners characterized First Massachusetts's distribution of branches as good or excellent in its assessment areas and stated that the bank provided an adequate level of community development services.

Recent CRA Activities of TDB Bank. During 2004, TDB Bank originated or purchased more than 14,000 HMDA-reportable loans totaling approximately \$1.7 billion throughout its combined assessment areas in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. In each of those states, TDB Bank made higher percentages of its HMDA-reportable loans to LMI borrowers than the percentages for lenders in the aggregate ("aggregate lenders") in 2004.³³

To assist first-time and LMI homebuyers, TDB Bank also offers loans insured by the Federal Housing Authority and loans guaranteed by the Department of Veterans Affairs and participates in state housing finance agency programs that offer below-market interest rates and lower down payment requirements. Applicants

³³ The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a given market.

represented that the bank originated more than 2,900 loans totaling more than \$275 million through these programs between January 2002 and June 2005.

From January 1, 2004, to December 31, 2004, TDB Bank's percentages of small loans to businesses in LMI and predominantly minority census tracts were higher than or comparable to the percentages for the aggregate lenders in its combined assessment areas.³⁴ In all its assessment areas across six states, the bank continues to participate in Small Business Administration ("SBA") and state programs focused on lending to small businesses unable to secure conventional financing. Applicants represented that TDB Bank was ranked the largest SBA lender in Maine and Vermont, the second largest SBA lender in New Hampshire, the third largest SBA lender in Massachusetts, and the fifth largest SBA lender in both New York and Connecticut for the twelve-month period ending September 2004. From January 1, 2003, through December 31, 2004, TDB Bank made more than 24,128 small loans to businesses totaling \$3.1 billion.

Applicants also represented that TDB Bank made 211 community development loans totaling more than \$307 million from January 2002 through June 2005. Applicants stated that this community development lending included loan commitments of \$7 million to finance the construction of 108 units of affordable housing in Massachusetts and two \$3.6 million loans to a nonprofit affordable housing organization to create and preserve affordable housing in New Hampshire. They noted that the bank made loan commitments totaling almost \$4.8 million during this same period to renovate public schools in Maine.

In addition, Applicants represented that TDB Bank's community development investments totaled approximately \$100 million from January 2002 through June 2005. Applicants noted that these investments included commitments

³⁴ For purposes of this HMDA analysis, a predominantly minority census tract means a census tract with a minority population of 80 percent or more.

of more than \$72 million to fund low-income housing tax credit projects in Maine, Massachusetts, New Hampshire, and Connecticut. They also indicated that the bank made community development grants totaling more than \$7.6 million during the same period to a wide range of community organizations throughout the bank's assessment areas.

C. Hudson United Bank

As noted, Hudson United Bank received an overall "satisfactory" rating in its February 2005 CRA evaluation. The institution received a "high satisfactory" rating under the lending, investment, and service tests. Examiners noted that Hudson United Bank's geographic distribution of loans reflected excellent penetration among retail customers of different income levels and business customers of different sizes.³⁵ In particular, examiners commended the bank's use of flexible lending programs to enable customers to receive credit when they otherwise would not qualify.

Examiners also praised Hudson United Bank for increasing its portfolio of qualified investments by more than 186 percent above its investment levels in the previous evaluation period. During the evaluation period, the bank's qualified investments in its assessment areas totaled \$61.5 million. Examiners commended Hudson United Bank for purchasing a significant volume of loans in response to the affordable housing and small business needs of individuals and businesses in the bank's assessment areas.

In addition, examiners noted that Hudson United Bank's retail banking services, including its branches, ATMs, and telephone and on-line banking, provided customers with very good access to the institution. Examiners also reported that

³⁵ A commenter expressed concern that Hudson United Bank had scaled back its home mortgage lending in several cities to avoid reinvestment obligations under the CRA. As noted, Applicants have indicated that TDB Bank will establish goals to improve performance under the CRA in Hudson United Bank's assessment areas.

Hudson United Bank provided a relatively high level of community development services to organizations throughout its assessment areas.

D. Branch Closures

One commenter expressed concern about the proposal's possible effect on branch closings.³⁶ Applicants have stated that they plan to close or consolidate four branches as a result of this proposal but that these actions would not leave any markets without service. In addition, Applicants represented that only one of the branches they plan to close or consolidate as a result of this proposal, TDB Bank's branch in Wallingford, Connecticut, is in an LMI census tract. Applicants stated that the Wallingford branch will combine with a Hudson United Bank branch, located within 700 yards, that offers better service capacity. Applicants also advised that TDB Bank expects to open a *de novo* branch in an LMI neighborhood in both the Hartford, Connecticut and Boston, Massachusetts Metropolitan Statistical Areas ("MSAs") by early 2007.

Applicants stated that TDB Bank will apply its branch closing policy across the institution after consummation of the acquisition. That policy requires senior and retail management to assess the impact of a closing on employees, customers, corporate clients, and the community at large.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to

³⁶ One commenter also expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the limited factors the Board is authorized to consider under the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See, e.g., Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

the appropriate federal supervisory agency before closing a branch.³⁷ In addition, the Board notes that the OCC, as the appropriate federal supervisor of TDB Bank, will continue to review the bank's branch closing records in the course of conducting CRA performance evaluations.

E. HMDA and Fair Lending Record

The Board has carefully considered the lending records and HMDA data of Applicants and Hudson United Bancorp in light of public comment received on the proposal. The commenters alleged, based on 2004 HMDA data, that TD Banknorth denied the home mortgage and refinance applications of African-American and Hispanic borrowers more frequently than those of nonminority applicants in various MSAs in the New England region.³⁸ In addition, a commenter alleged that Hudson United Bank made higher-cost loans more frequently to African-American borrowers than to nonminority borrowers.³⁹ The Board reviewed the HMDA data for 2004 that

³⁷ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. section 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least a 30-day notice and the appropriate federal supervisory agency and customers of the branch with at least a 90-day notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

³⁸ A commenter expressed concern that TDB Bank failed to adequately reinvest in minority communities and that the bank lagged its competitors in home mortgage lending to minority individuals and in minority census tracts throughout its assessment areas.

³⁹ Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and by 5 percentage points for second-lien mortgages. 12 CFR 203.4.

were reported as follows: (1) by TDB Bank in the six states in its assessment areas, (2) by Hudson United Bank in the four states in its assessment areas, (3) in the MSAs identified by the commenters, and (4) in certain other MSAs.⁴⁰

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Hudson United Bank or TDB Bank is excluding or imposing higher credit costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.⁴¹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race.

⁴⁰ The Board also reviewed the data for the Portland, Maine MSA, which is TDB Bank's home market, and for the Hartford and New Haven, Connecticut MSAs, which are served by Hudson United Bank.

⁴¹ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by the subsidiary depository institutions of Applicants and Hudson United Bank. In the fair lending reviews conducted in conjunction with the CRA evaluations discussed above, examiners noted no substantive violations of applicable fair lending laws by TDB Bank or Hudson United Bank. In addition, the Board has consulted with the OCC, the primary federal supervisor of TDB Bank, and the FDIC, the primary federal supervisor of Hudson United Bank.

The record also indicates that Applicants have taken steps to ensure compliance with fair lending laws and other consumer protection laws. Applicants have indicated that TDB Bank's corporate compliance program includes regulatory monitoring, issue and implementation management, complaint tracking, computer-based compliance training, and frequent reports to business-line managers and the Board Risk Committee of TDB Bank's board of directors. To ensure compliance with fair lending laws, TDB Bank has developed a comprehensive review program overseen by a Fair Lending Manager, who has responsibility for reviewing all marketing materials, lending policies and procedures and for conducting fair-lending file reviews annually. Applicants also reported that TDB Bank's fair lending file review includes comparative file analysis of underwriting, pricing, overrides, and exceptions for targeted products. This review includes an annual analysis of TDB Bank's HMDA data to identify any fair lending issues. Such issues are entered into a corporate-compliance database for tracking, resolution, and follow-up. Applicants have stated that every component of TDB Bank's existing compliance programs would be carried over into Hudson United Bank's operations and that additional compliance staff would be hired to help ensure their implementation.

The Board also has considered the HMDA data in light of other information, including the Applicants' CRA lending programs and the overall performance records of the subsidiary banks of Applicants and Hudson United Bancorp under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record,⁴² including reports of examination of the CRA records of the institutions involved, information provided by the Applicants, public comments on the proposal, and confidential supervisory information. The Board notes that the proposal would offer the customers of Hudson United Bancorp a wider array of banking products and services, including access to TDB Bank's more extensive branch network. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including

⁴² One commenter requested that the Board condition its approval of the proposal on TD's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., J.P. Morgan Chase & Co., 90 Federal Reserve Bulletin 352 (2004); Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the Applicants and the programs that they have in place to serve the credit needs of their CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by TD under this factor, the Board similarly will review TD's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴³ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.⁴⁴

⁴³ Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views, and in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenters' requests fail to demonstrate why the written comments do not present their views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

⁴⁴ One commenter also requested that the Board extend the comment period and delay action on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter has had ample opportunity to submit its views and has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded

The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,⁴⁵ effective January 13, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

that the record in this case is sufficient to warrant action at this time and that neither an extension of the comment period nor further delay in considering the proposal is warranted.

⁴⁵ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Olson and Kohn. Absent and not voting: Governor Bies.

APPENDIX A

Banking Markets in which Applicants and Hudson United Bancorp Compete Directly

Metro New York

Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

Hartford, Connecticut

This definition is based on the Hartford Ranally Metro Area. It includes Andover, Ashford, Avon, Barkhamsled, Berlin, Bloomfield, Bolton, Bristol City, Broad Brook, Burlington, Canton, Centerbrook, Chaplin, Chester, Colchester, Colebrook, Collinsville, Columbia, Coventry, Cromwell, Deep River, Durham, East Granby, East Haddam, East Hampton, East Hartford, East Windsor, Eastford, Ellington, Enfield, Essex, Farmington, Forestville, Glastonbury, Granby, Haddam, Hampton, Hartford City, Hartland, Hebron, Higganum, Kensington, Lebanon, Manchester, Mansfield, Marlborough, Middlefield, Middletown City, Moodus, New Britain City, New Hartford, Newington, North Windham, Old Saybrook, Plainville, Plantsville, Plymouth, Poquonock, Portland, Rockville City, Rocky Hill, Scotland, Simsbury, Somers, South Glastonbury, South Windsor, Southington, Southingtonboro, Stafford, Stafford Springs, Storrs, Storrs Mansfield, Suffield, Terryville, Thompsonville, Tolland, Union, Unionville, Vernon, Vernon-Rockville, Warehouse Point, Weatogue, West Hartford, West Suffield, West Willington, Wethersfield, Willimantic City, Willington, Winchester, Windham, Windsor, Windsor Locks, and Winsted City.

New Haven, Connecticut

The New Haven Ranally Metro Area and the town of Westbrook.

APPENDIX B

Market Data for Banking Markets

Highly Concentrated Banking Markets

Hartford, Connecticut

TD operates the fourth largest depository institution in the market, controlling deposits of \$1.8 billion, which represent 7 percent of market deposits. Hudson United Bancorp operates the 20th largest depository institution in the market, controlling deposits of approximately \$145 million, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would continue to operate the fourth largest depository institution in the market, controlling deposits of approximately \$1.9 billion, which represent approximately 8 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase 8 points to 2468.

Moderately Concentrated Banking Markets

Metro New York

TD operates the eighth largest depository institution in the market, controlling deposits of \$24.2 billion, which represent 3 percent of market deposits. Hudson United Bancorp operates the 24th largest depository institution in the market, controlling deposits of approximately \$4.4 billion, which represent less than 1 percent of market deposits. After the proposed acquisition, TD would remain the eighth largest depository institution in the market, controlling deposits of approximately \$28.6 billion, which represent 4 percent of market deposits. Two hundred fifty-four depository institutions would remain in the banking market. The HHI would increase 3 points to 1040.

New Haven, Connecticut

TD operates the 12th largest depository institution in the market, controlling deposits of \$80 million, which represent less than 1 percent of market deposits. Hudson United Bancorp operates the seventh largest depository institution in the market, controlling deposits of approximately \$769 million, which represent 8 percent of market deposits. After the proposed acquisition, TD would become the seventh largest depository institution in the market, controlling deposits of approximately \$849 million, which represent approximately 9 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 12 points to 1351.